UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:14-cv-37-FDW

CHARLES A. RIPPY, JR.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	**ORDER**
WARDEN OF CENTRAL PRISON,[1]	)	
	)	
Respondent.	)	
_____	)	

       THIS MATTER is before the Court on Petitioner's Petition for Writ of Habeas Corpus,

filed under 28 U.S.C. § 2254, (Doc. No. 1).[2] For the reasons that follow, the Court finds that this

is an unauthorized, successive petition, and the Court therefore dismisses the petition.

       Pro se Petitioner Charles Rippy, Jr., is a North Carolina state court inmate currently

incarcerated at Alexander Correctional Institution. On or about September 27, 1993, Petitioner

pled guilty to one count of rape, two counts of burglary, two counts of assault with a deadly

weapon, inflicting serious injury, and one count of theft of an automobile. The Superior Court of

Catawba County sentenced Petitioner to a term of life imprisonment. In a prior Section 2254

petition, filed on November 19, 2007, Petitioner challenged the same conviction he challenges in

this petition. In an Order filed on December 4, 2007, this Court found that Plaintiff's habeas

proceeding was untimely and could not be saved by equitable tolling. Accordingly, the Court

dismissed his petition. Rippy v. Anderson, No. 5:07cv125-MU-02, 2007 WL 4287514

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[1] Because Petitioner is incarcerated at Alexander Correctional Institution, the proper Respondent
is the custodian of that prison. See Rumsfeld v. Padilla, 542 U.S. 426, 434-35 (2004).
[2] Before the Middle District of North Carolina transferred this action, that Court granted
Petitioner's motion to proceed in forma pauperis.

(W.D.N.C. Dec. 4, 2007). On October 3, 2008, the Fourth Circuit dismissed Petitioner's appeal in a per curiam decision. Rippy v. Anderson, 295 F. App'x 591 (4th Cir. 2008) (unpublished).

Petitioner placed the instant petition in the prison system for mailing on March 21, 2014, and it was stamp-filed on March 27, 2014.[3] Thus, this is the second habeas petition filed by Petitioner challenging his prior state conviction. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Thus, Petitioner must first obtain an order from the United States Court of Appeals for the Fourth Circuit before this court will consider any successive petition under 28 U.S.C. § 2254. Petitioner has not shown that he has obtained the permission of the United States Court of Appeals for the Fourth Circuit to file a successive petition. Accordingly, this successive petition must be dismissed. See Burton v. Stewart, 549 U.S. 147, 153 (2007) (holding that failure of petitioner to obtain authorization to file a "second or successive" petition deprived the district court of jurisdiction to consider the second or successive petition "in the first place").

IT IS, THEREFORE, ORDERED that

1.   Petitioner's § 2254 petition is **DISMISSED** as a second or successive petition.

2.   **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules

Governing Section 2254 and Section 2255 Cases, this Court declines to issue a

certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller–El v. Cockrell,

537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must

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[3] Petitioner filed the petition in the Middle District of North Carolina and that Court transferred the petition to this Court. (Doc. No. 3).

demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right). Petitioner has failed to make the required showing.

Signed: April 2, 2014

Frank D. Whitney
Chief United States District Judge